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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,534	02/19/2004	Michael Levernier	ALTU-910	3265
28584 7590 03/04/2009 STALLMAN & POLLOCK LLP 353 SACRAMENTO STREET SUITE 2200 SAN FRANCISCO, CA 94111				
EXAMINER				
FARAH, AHMED M				
ART UNIT		PAPER NUMBER		
3769				
MAIL DATE		DELIVERY MODE		
03/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,534

Applicant(s)

LEVERNIER ET AL.

Examiner

Ahmed M. Farah

Art Unit

3769

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 103-112 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 103-112 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 103-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Durkin et al. Pub. No. US 2003/0036749 in view of Eckhouse et al. U.S. Patent No. 5,776,175 and Furumoto US Patent No. 6,273,883.

Durkin et al. disclose a method and apparatus for treating skin disorders, such as the treatment of acne (see the abstract), using laser pulses generated by a laser source selected from the group consisting of Nd:YAG laser, Ho:YAG laser, and diode laser (see paragraph [0057]), the method comprising the steps of:

generating a series of laser pulses, each having a wavelength of between 0.95-2.1 microns, a power of between 1 watt to 10 Kwatts, fluence of between 0.1-500 J/cm² (see paragraph [0013], and a spot size of 4 mm over the skin at a repetition rate of 1 Hz (see paragraph [0065]); and scanning the laser pulses over the treatment site by moving the handpiece 38 over the skin (see Fig. 2).

Durkin et al. do not teach the pulse duration of the laser pulses as claimed. With respect to claim 107, although Durkin et al. teach that the treatment site is irradiated

with the laser pulses for a time and fluence sufficient to provide the desired treatment, they do not specifically teach the range/duration of the treatment time as claimed.

However, the use of laser energy having a fluence of between $8\text{-}20\text{ J/cm}^2$, and a pulse duration in the millisecond range is known in the art. As to claim 107, the examiner further notes that the step of delivering treatment energy to the skin for a period of between 1-5 minutes during dermatological treatment is known in the art. Eckhouse et al. disclose a non-ablative phototherapy system and method of use for treating body tissue, the method comprising the steps of: irradiating to the body tissue with treatment light pulses of between 1 to 100 pulses (see col. 4, lines 20-21) for a time period of about 5 minutes (see col. 3, line 64 to col. 4, line 3), the treatment light pulses having a fluence of between 100 mJ/cm^2 to 10 J/cm^2 (see col. 5, lines 2-3) and pulse width of between of between $100\text{ }\mu\text{s}$ to 100 ms (see col. 2, lines 32-37). Furumoto teaches an alternative dermatological laser apparatus and method of use, the method comprising the step of exposing laser pulses to the skin, the laser pulses having a pulse duration of few millisecond, and a fluence of between $10\text{-}50\text{ J/cm}^2$.

Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Durkin et al. in view of Furumoto and use laser pulses having a pulse duration of between microseconds to about few milliseconds to treat the skin.

With respect to claims 108-11, the applicant failed to teach the parameters treatment optical energy as recited in claim 103 has a particular advantage for the treatment of the recited skin disorders. Hence, the examiner' position is that one of

ordinary skill in the art would have used the invention of Durkin et al. in view of Furumoto to treat skin disorders as claimed.

2. Claims 103 and 108-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewey et al. US Patent No. 5,558,666 in view of Durkin et al. Pub. No. US 2003/0036749.

Dewey et al. disclose a dermatological treatment handpiece and method of use for treatment of skin conditions, the method comprising the step of irradiating laser pulses having a fluence of up to 250 millijoules (mj) per pulse, a pulse duration of up to 1 millisecond (ms), a variable spot size of between 1 to 5 mm (see Fig. 7), and a repetition rate of 400 Hz, for an average power of 100 watts.

With respect to claim 111, Dewey et al. teach that the handpiece provides to the tissue a highly collimated beam, which is insensitive to "movement of the handpiece over a range of working positions." Figure 4 of Dewey et al. further shows a range of the beam spot size as function of position of the handpiece in relation to the skin.

Dewey et al. do not teach the use of an Nd:YAG laser or a laser power of up to 10 Kwatts to treat the skin conditions as claimed. However, the method of treating skin conditions using an Nd:YAG laser that provides a power of up to 10 Kwatts to the skin is known in the art. Durkin et al., described above, teaches a method treating a skin condition by exposing the skin to laser pulses of between 1 watt to 10 Kwatts generated by an Nd:YAG laser. Hence, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Dewey et al. in view of Durkin et al.

and use an Nd:YAG laser generating pulses of between 1 watt to 10 Kwatts as an equivalent alternative source to provide the treatment energy.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/
Primary Examiner, Art Unit 3769

March 1, 2009.

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